

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FTF LENDING LLC, a Delaware
limited liability company,

Plaintiff,

v.

Case No: 2:23-cv-149-JES-NPM

BLUE INTERNATIONAL GROUP
LLC, a Florida limited
liability company and
LUCRECIA M DELMONTE, an
individual,

Defendants.

OPINION AND ORDER

This matter comes before the Court on plaintiff's Motion for Judgment by Default Against Defendant Blue International Group LLC (Doc. #25) and Motion for Judgment by Default Against Defendant Lucrecia M. Delmonte (Doc. #26) filed on August 23, 2023. No responses have been filed and the time to respond has expired.

A. Prerequisites

A Clerk's Entry of Default (Doc. #21) was issued as to both Blue International Group LLC (Blue Group) and Lucrecia M. Delmonte (Delmonte) on July 17, 2023. Plaintiff filed a Notice of Lis Pendens (Doc. #22) regarding property located in Charlotte County, Florida. Plaintiff has obtained a default as to all defendants and is therefore entitled to seek a default judgment. Fed. R.

Civ. P. 55(a). After prompting, doc. #23, plaintiff has now moved for a default judgment.

B. Applicable Law

When a defendant defaults, he, she, or it is “deemed to admit the plaintiff’s well-pleaded allegations of fact, [but] is not held to admit facts that are not well-pleaded or to admit conclusions of law.” Surtain v. Hamlin Terrace Foundation, 789 F.3d 1239, 1245 (11th Cir. 2015). To warrant a default judgment, the facts alleged in the pleadings must provide a sufficient basis for judgment. Id. (quoting Nishimatsu Const. Co., Ltd. V. Houston Nat’l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975)). The sufficiency standard is that “necessary to survive a motion to dismiss for failure to state a claim.” Surtain, 789 F.3d at 1245 (citations omitted).

C. Complaint

On October 15, 2021, Blue Group executed a commercial promissory note in favor of FTF Lending LLC (FTF Lending or plaintiff) in the original principal amount of \$385,000, plus interest. Blue Group delivered possession of the original Note to plaintiff. To secure repayment on the Note, Delmonte executed a Guaranty and a mortgage, assignment of leases and rents, fixture filing, and security agreement (Mortgage). In the Mortgage, Blue Group granted, mortgaged, and conveyed all of its right, title, and interest in real property located at 839 Conreid Drive NE,

Port Charlotte, Florida, and the Mortgage was recorded on November 15, 2021, in Charlotte County, Florida. Plaintiff has performed all conditions precedent and owns and holds the original Note, Guaranty, and Mortgage. Blue Group is the current owner of the property under the Warranty Deed and may be in possession and/or control of the property.

Count One alleges a breach of the Note against Blue Group for the failure to make payment when due under the Note, including the maturity balloon payment and the other amounts recoverable under the Loan Documents. The Note Default provisions provide that plaintiff is entitled to institute a default interest rate on the unpaid principal balance and/or to assess a late charge for each payment not submitted when due. On January 17, 2023, plaintiff mailed written notice of default to Blue Group and Blue Group failed to cure the Note during the cure period. As of January 31, 2023, Blue Group owes plaintiff \$399,008.82 plus interest from February 1, 2023, and thereafter.

Count Two alleges a breach of the Guaranty against Delmonte who guaranteed Blue Group's payment of the debt evidenced by the Note and Mortgage. On September 23, 2022, plaintiff mailed the Notice of Default to Delmonte and Delmonte failed to cure during the cure period.

Under Count Three, plaintiff seeks recovery against both defendants for damages related to the mortgage against the

property. Plaintiff seeks to foreclose the Mortgage on the property and Blue Group may claim an interest in the property. Plaintiff seeks to foreclose on the property to satisfy the total amount due to plaintiff under the Mortgage.

D. Default Judgment - Blue Group

The Affidavit of FTF Lending LLC (Doc. #24) was submitted by the Manager of Asset Management, Peter Kuclo, who reviews non-performing loan accounts to ensure timely payments. A Promissory Note (Doc. #1-2) and Mortgage, Assignment of Leases and Rents, Fixture Filing, and Security Agreement (Doc. #1-4) were executed in favor of plaintiff by Blue Group, and both remain unpaid and uncured.

The Note is secured by a mortgage lien in the principal sum of \$385,000 evidenced by the Mortgage encumbering real estate in Charlotte County. (Doc. #1-2, ¶ 4.1.) Under the Default and Acceleration provisions of the Note, the whole principal sum, interest, default interest, late charges, fees and other sums, all other monies provided in the Note and Mortgage become immediately due and payable. (Id., ¶ 6.1.) The Mortgage also provides that the debt is immediately due and payable in the event of a default including interest on the unpaid principal balance of the Note. (Doc. #1-4, ¶¶ 20, 21.1.)

The request for a default judgment is granted in favor of plaintiff and against Blue Group in the amount of \$433,658.85,

plus per diem interest of \$192.50 from August 1, 2023, and thereafter, and all other amounts recoverable under the Note and the Mortgage. The request for a default judgment is also granted in favor of plaintiff and against Blue Group foreclosing the Mortgage, adjudging the Property be sold to satisfy the amount due under the Mortgage, and fixing the amount due under the Mortgage at \$433,658.85, plus per diem interest of \$192.50 from August 1, 2023, and thereafter, plus all other amounts recoverable under the Note and the Mortgage.

E. Default Judgment - Delmonte

The Affidavit of FTF Lending LLC (Doc. #24) by Peter Kuclo provides that Delmonte executed a commercial guaranty in favor of plaintiff and delivered possession of the Guaranty (Doc. #1-3) to plaintiff. Delmonte failed to cure the Note default, and both Blue Group and Delmonte jointly and severally owe the debt. The Guarantor's obligations under the Guaranty are absolute and unconditional, and remain in effect until the entire principal, interest and other sums under the loan documents are paid in full. (Id., at ¶ 2.2.)

The request for a default judgment is granted in favor of plaintiff and against Delmonte in the amount of \$433,658.85, plus per diem interest of \$192.50 from August 1, 2023, and thereafter, and all other amounts recoverable under the Guaranty.

Accordingly, it is hereby

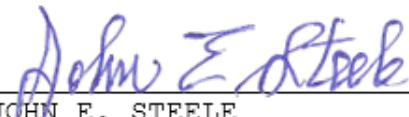
ORDERED:

1. Plaintiff's Motion for Judgment by Default Against Defendant Blue International Group LLC (Doc. #25) as to Count One and Count Three is **GRANTED**.
2. Plaintiff's Motion for Judgment by Default Against Defendant Lucrecia M. Delmonte (Doc. #26) as to Count Two is **GRANTED**.
3. The Clerk shall enter a default judgment in favor of plaintiff and against defendants as to Counts One and Two, jointly and severally, in the amount of \$433,658.85, plus per diem interest of \$192.50 from August 1, 2023, and thereafter, and all other amounts recoverable under the Note, Mortgage, and Guaranty.
4. The Clerk shall further enter a default judgment in favor of plaintiff and against defendant Blue International Group LLC as to Count Three. Plaintiff may proceed with foreclosing on the Mortgage recorded on November 15, 2021, in the Office of the Clerk of Circuit Court, Charlotte County, Florida as Instrument #3022370 and executed by Defendant Blue International Group LLC against one (1) parcel of real property more commonly known as 839 Conreid Drive NE, Port Charlotte, Florida 33952 (Parcel ID #402227284001) (the "Property") based on the entry of the default judgment on the Note, Mortgage, and Guaranty.

5. Plaintiff shall sell the property to satisfy the total amount due to Plaintiff FTF Lending LLC under the terms of the Mortgage while fixing the amount due under the Mortgage at \$433,658.85, plus per diem interest of \$192.50 from August 1, 2023, and thereafter, plus all other amounts recoverable under the Note and Mortgage with any balance to be returned to Blue International Group LLC, if applicable.

6. The Clerk shall terminate all pending motions and deadlines and close the file.

DONE and ORDERED at Fort Myers, Florida, this 12th day of September 2023.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Counsel of Record